

Appl. No. 10/525,128  
Amdt. dated January 4, 2007  
Reply to Office Action of October 10, 2006

### **REMARKS/ARGUMENTS**

This amendment is being filed in response to the Office Action mailed October 10, 2006 in which the specification was objected to, the claims were rejected under 35 U.S.C. 112 and were also rejected under 35 U.S.C. 102. In this amendment the spelling error in the specification is being corrected and new claims are submitted which have a proper antecedent basis so as to remove the objections under 35 U.S.C. 112. In the remarks below, Applicant will demonstrate that his claims should be allowed over the cited prior art.

Claims 1 and 2 rejected under 35 U.S.C. 102(b) as being anticipated by the Jonson patent and have been re-written as new claims 3 and 4. Applicant would like first to point out that a major distinction of his invention over the Jonson reference is the filter arrangement. Applicant's filter is placed so that both the inspiration and expiration legs 7 and 8 pass through the filter. In Fig. 1 of Jonson, there is only one filter, namely, the filter 63 on the expiration leg. In Fig. 2 of Jonson a second leg is shown with filter 58 on the inspiration leg. Thus, Jonson must use two filters but provides no motivation or suggestion to use just one. The two filter arrangement causes a split into an expiration and an inspiration tube thus making it necessary to move the atomizer in Jonson further away from the patient.

As a consequence of the placement of the atomizer, a further measure of distinction of Applicant's invention over Jonson is realized and it is that the aerosol producing atomizer 3 of Applicant's invention can be placed very close to the patient and this can be readily seen in Figs. 1a, 1b, 2a and 2b. Jonson necessarily positions

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the atomizer unit far away from the patient in the inspiration leg. This far away arrangement has the disadvantage that the atomized aerosol might, because of its long flow path, condense on the way to the patient and the inspiration leg and such condensate can be dangerous to the lungs of a patient. The condensation further leads to a second disadvantage in Jonson as the condensed aerosol in the inspiration leg is a culture medium for bacteria. As can be seen from Applicant's invention, the arrangement of the atomizer close to the patient helps to avoid this disadvantage as the danger of condensation of the aerosol as well as the bacterial danger is greatly reduced.

Another distinction and advantage to Applicant's invention is that every sort of atomizer may be used whereas Jonson is only able to use a pressurized atomizer which employs nozzle 71 as shown in Figs. 1 and 3 of Jonson.

An advantage of Applicant's embodiment in Applicant's Fig. 1 over Jonson is the arrangement according to the embodiment shown in Fig. 1 which allows the continuous production of atomized aerosols, that is, during the expiration phase an adequate amount of atomized aerosol is always available in the inspiration leg.

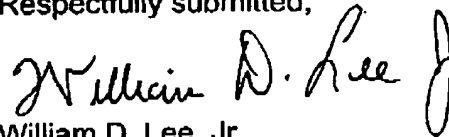
An advantage and distinction which is presented in a second embodiment of Applicant's invention which is shown in Fig. 2, is that only a very simple valve 12 is required which is controlled by means of simple control cable or hose 14. As can be recognized from this embodiment, the valve 12 is arranged such that the dead space volume is enormously reduced and not filled with aerosol. Jonson as already mentioned, provides a very long flow path with much dead space volume. Therefore,

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the control unit for Applicant's embodiment according to Fig. 2 is much easier and simpler than the complicated control system of Jonson which requires a number of control parts. The result is that the valve control according to the Applicant's invention is directly connected with the aerosol producing atomizer whereas Jonson requires several different valves which are not directly connected with the atomizer. Applicant's system is therefore more easily controlled and can be made at lower cost.

For the reasons set forth above, Applicant's invention is not anticipated by Jonson as the filter and inspiration and expiration means are distinctly different, simpler, and provide improved operation, sanitation and safety. Accordingly, it is respectfully requested that Applicant's claims be allowed.

Respectfully submitted,



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